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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-258

ROBERT BLOOM, ACTING COMPTROLLER
OF THE CURRENCY, *Petitioner,*
v.
INDEPENDENT BANKERS ASSOCIATION
OF AMERICA, ET AL., *Respondents.*

On Petition for a Writ of Certiorari To the United States Court of Appeals For the District of Columbia Circuit

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit, which is reported at 534 F.2d 921, is attached as Appendix A to the Petition. The opinion of the United States District Court for the District of Columbia, reported at 402 F. Supp. 207, is attached as Appendix C to the Petition.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

QUESTION PRESENTED

Whether off-premises electronic banking facilities known as "customer-bank communication terminals" at which deposits are accepted, checks paid and money lent, operated by national banks, are branch banks within the meaning and intent of the National Bank Act.

STATUTE AND RULING INVOLVED

The relevant provisions of the National Bank Act, 12 U.S.C. 1 *et seq.*, (Sections 36(c) and 36(f) are set out in footnotes 2 and 4, *infra*), are attached as Appendix D to the Petition. The interpretive ruling issued by the Comptroller of the Currency, 12 C.F.R. 7.7491, as amended (40 Fed. Reg. 21703), concerning "customer-bank communication terminals," is attached as Appendix E to the Petition.

STATEMENT

This case involves the validity of an interpretive ruling issued by the Comptroller of the Currency relating to the status of "customer-bank communication terminals" ("CBCTs") under the National Bank Act (the "Act"), as amended, 12 U.S.C. 1 *et seq.* CBCTs are manned or unmanned electronic terminals which may be located off bank premises and permit a bank customer to accomplish various banking transactions (depending on how the machine is programmed), including the deposit and withdrawal of funds, transfer of funds between accounts and other banking functions generally carried out on the premises of the bank's main or authorized branch offices. These automated tellers may be located in shopping centers, supermarkets, stores, factories, office buildings, etc., and any approved bank customer with a plastic "key

card" can effect transactions at these terminals as if actually in the main bank office dealing with a human teller. Automated tellers may be directly connected to the bank's computer ("on-line") or may require pick-up of electronic tape material for transportation to the bank ("off-line"). Manned CBCTs, known as point-of-sale (POS) terminals, are normally operated by an employee of a third party, e.g., a department store or supermarket.[1]

The central, substantive issue in this case is whether CBCTs are bank "branches" within the meaning and intent of Section 36(f) of the National Bank Act.[2] If they are, then CBCTs are subject to the restrictions of the Act governing branching; if they are not, national banks can install and operate CBCTs anywhere (even across state lines) with no restrictions other than the 30-day notice requirement and the 50-mile geographical limitation (on unshared terminals) of the Comptroller's ruling.[3] The ruling

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[1] In a typical POS transaction, the bank customer presents the terminal operator with the information necessary to execute a desired transaction, and the appropriate instructions are given the terminal. The bank's computer instantaneously makes the desired transfer between the customer's and the third party's accounts.

[2] Section 36(f) provides:

> (f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

[3] On May 9, 1975, the Comptroller amended the ruling, effective June 1, 1975 (40 Fed.Reg. 21701). The amended ruling did not alter the interpretations of statute expressed in the original December ruling. The amended ruling imposed a mileage limitation on exclusive (unshared) CBCTs. A national bank may establish such an

makes no provision for publication of such notices nor is there any requirement of "approval" by the Comptroller, as there would be in the establishment of a traditional "branch."

The important restrictions of the Act applicable to "branches" are found in Sections 36(c), 36(d) and 51. Section 36(c) outlines the terms under which a national bank may establish and operate a new branch.[4] First, the bank must secure the approval of

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exclusive CBCT within 50 miles from its main office or closest branch, whichever is nearer. If the CBCT is available to be shared by other local (within the trade area of the CBCT) financial institutions authorized to receive deposits, there is no mileage limitation. The amended ruling, even with its mileage limitation on exclusive CBCTs, still ignores state lines and state law, allowing CBCTs to be established in any state by nondomiciliary national banks without regard to that state's branching laws.

[4] Section 36(c) provides:

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, *if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question;* and (2) at any point within the State in which said association is situated, *if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.* In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: *Provided,* That

the Comptroller. Second, the establishment and operation of the branch must be expressly authorized to state banks under state law. Third, the branch must comply with state law restrictions governing location and state law requirements as to minimum capital stock and surplus. Sections 36(d) and 51 set additional minimum capital requirements for national banks and their branches. As the court below found, under the Comptroller's interpretation, "the restrictions of sections 36(c) 36(d) and 51 are totally circumvented." Although the Comptroller solicited no comments from interested persons, plaintiff IBAA filed a Petition with the Defendant Comptroller, on December 20, 1974, requesting repeal of the ruling pursuant to the APA (5 U.S.C. § 553(e)) and further requesting the Comptroller to conduct formal rulemaking proceedings as required by § 553(c) of the Act (5 U.S.C. § 553), and as required by the Due Process Clause of the Fifth Amendment to the U.S. Constitution. After both requests were denied, IBAA, ten state-chartered banks and an individual bank customer filed this action, and Robert A. Mampel, Commissioner of Banks for the State of Minnesota, joined as an additional party plaintiff. The Comptroller then moved to dismiss the action on the grounds of non-

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any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock. (Emphasis added).

justiciability or, in the alternative, for summary judgment on the merits. Plaintiff filed a cross-motion for summary judgment.

The district court ruled that plaintiffs IBAA, Commissioner Mampel and three of the state banks which were located within 50 miles of a proposed CBCT had standing to sue and that the challenge presented a justiciable case or controversy. The court dismissed the remaining state-bank plaintiffs who were outside a 50-mile radius of any proposed CBCT, and the individual plaintiff, for lack of standing.

On the merits, the district court, relying primarily on *First National Bank in Plant City* v. *Dickinson,* 396 U.S. 122 (1969) ("Plant City") ruled that a CBCT was a "branch bank, branch office, branch agency, additional office or any branch place of business" within the meaning of Section 36(f) of the National Bank Act (12 U.S.C. 36(f)), and that CBCTs were facilities "at which deposits are received, or checks paid, or money lent," also within the meaning of Section 36(f). The court held the Comptroller's contra determination to be "without merit," granted summary judgment for plaintiffs, and issued a permanent injunction restraining the Comptroller from further implementation of the ruling.[5]

The Court of Appeals unanimously affirmed. The court found that "plaintiffs' challenge presents a justiciable case or controversy ripe for judicial resolu-

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[5] • • •

"Further ordered that Defendant and all persons acting under his direction and authority or in active concert or participation with him be and hereby are, permanently enjoined from further implementation of the ruling, and any authority heretofore given to national banks by the ruling is hereby rescinded." (402 F. Supp. 210; Pet.App. 85a).

tion" (534 F.2d 930; Pet.App. 18a) and, on the merits, held that "[t]he Comptroller has not successfully distinguished this case from the facts and law of *Plant City*. . . . We conclude that, regardless of private contract law and superficial form, any facility that performs the traditional bank functions of receiving or disbursing funds is a 'branch' of a national bank within the meaning of section 36(f) if (1) the facility is established (i.e., owned or rented) by the national bank, and (2) it offers the bank's customers a convenience that gives the bank a competitive advantage over other banks (national or state) that do not operate similar facilities." (534 F.2d 951; Pet. App. 75a).

ARGUMENT

I. THE WRIT SHOULD BE DENIED BECAUSE THE DECISION BELOW PRESENTS NO CONFLICT WITH THE DECISIONS OF OTHER COURTS OF APPEALS WHICH HAVE DECIDED THE SAME ISSUE OR WITH PREVIOUS DECISIONS OF THIS COURT

Since the decision below, three other courts of appeals have decided the identical issue. All three, in unanimous decisions, agreed with, and relied upon, the decision below.

On May 27, 1976, the Court of Appeals for the Seventh Circuit[6] (per curiam) (Mr. Justice Clark, and Judges Swygert and Bauer) held that "the opinion in *IBAA* v. *Smith*, decides the issues involved correctly," and, accordingly, that the CBCTs involved therein were "branches" within the meaning of Section 36(f).

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[6] *Illinois ex rel. Lignoul* v. *Continental Illinois Bank and Trust Co.*, 536 F.2d 176, (C.A. 7, 1976).

Thereafter, on July 20, 1976, the Eighth Circuit expressed its unanimous agreement with the District of Columbia Circuit's opinion herein, and affirmed the judgment below,[7] holding that the operation of CBCTs by national banks constituted branch banking within the meaning of Section 36(f).[8]

One month later, the Tenth Circuit (McWilliams, J.) also unanimously agreed with the District of Columbia Circuit.[9]

Petitioner's statement that the substantial litigation surrounding the issue of the status of CBCTs has resulted in "conflicting decisions" is true only with respect to district court decisions which were pending on appeal at the time the petition was filed—the four circuits which have now decided the issue are all in unanimous agreement that CBCTs are, indeed, branch banks within the meaning of Section 36(f) of the Act. There have been no dissenting opinions, and there are no other appeals pending.

Further, this case raises no novel question of federal law which warrants consideration by this Court. The court below (and all three other circuits) decided that this case was indistinguishable from the facts and law of *First National Bank in Plant City* v. *Dick-*

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[7] *Missouri ex rel. Kostman* v. *First National Bank in St. Louis*, C.A. 8, decided July 20, 1976 (No. 76-1056).

[8] The Court found that CBCTs can accept deposits and since § 36(f) is in the disjunctive, there was no need to consider the other two enumerated statutory functions of cashing checks or lending money. (Slip Opinion, p. 4, fn.).

[9] *Colorado ex rel. State Banking Board* v. *First National Bank of Ft. Collins*, C.A. 10, decided August 20, 1976 (Nos. 75-1523, 75-1611, 75-1612).

inson, supra. Mr. Chief Justice Burger's opinion for the Court in *Plant City* further clarified the reasoning of Mr. Justice Clark's opinion for a unanimous court in *First National Bank* v. *Walker Bank & Trust Co.*, 385 U.S. 252 (1966), which traced the legislative history of the McFadden Act as it relates to branch banking. The court below found that "*Plant City* clearly supports (in fact, requires) the district court's conclusion that all CBCTs are branches for purposes of federal law." (534 F.2d 934; Pet.App. 29a).

In *Plant City,* the facilities involved were an armored car which delivered cash and received funds for deposit, and a stationary deposit receptacle located in a shopping center near the bank. This Court found both facilities to be "branches" within the meaning of Section 36(f). "The term 'branch bank' at the very least includes *any* place for receiving deposits or paying checks or lending money apart from the chartered premises; it may include more." 396 U.S. at 135 (emphasis in text). This Court further cautioned that "the definition of 'branch' in § 36(f) must not be given a restrictive meaning which frustrate[s] the Congressional intent . . . found to be plain in *Walker Bank.*" 396 U.S. at 134.

The court below correctly applied that definitional standard to another type of off-premises facility, established by national banks, which accepts deposits and/or cashes checks and/or lends money.

Plant City was correctly decided. The Comptroller's argument herein merely restates his previous position, rejected in *Plant City* and by the courts of appeals. The legislative history of the Act has not changed, the Act has not been amended, yet the Comp-

troller again seeks judicial approval for his administrative attempt to circumvent Section 36(f).

II. THE DECISION BELOW IS CORRECT—CBCTS ARE BRANCHES WITHIN THE FEDERAL DEFINITION

A. Plant City

The legislative history of the McFadden Act and this Court's reasoning in *Plant City* clearly show:

(1) Congress intended to cover the routine and traditional bank services normally performed at the main banking house when enacting branch banking legislation;

(2) The definition of "branch" was intentionally left in a broad and indefinite form, defining only the minimum requirements as opposed to the outer limits of the term;

(3) Any off-premise facility which allows a national bank to gain competitive advantage over competing state banks should be examined closely; and

(4) In determining whether an off-premise facility is a "branch," courts should not interpret Section 36(f) in a restrictive way so as to frustrate Congressional intent with respect to the doctrine of "competitive equality."

The court below correctly applied these principles in its examination of CBCTs. The court thus expressed the striking parallel between *Plant City* and the instant case:

> Chief Justice Burger concluded his *Plant City* opinion with the following admonition:
>
> > Here we are confronted by a systematic attempt to secure for national banks branching privileges which Florida denies to competing state banks. The utility of the armored car service and deposit receptacle are obvious; many States permit state chartered banks to use this eminently sensible mode of operations, but Florida's policy is not open to judicial review any more than is the congressional policy of "competitive equality." Nor is the congressional policy of competitive equality with its deference to state standards open to modification by the Comptroller of the Currency.

> The same admonition applies with equal force to the facts of the instant case: Again we are confronted with an attempt to secure for national banks branching privileges which many states deny to competing state banks. The utility of CBCT's is obvious; several states permit state-chartered banks to use this eminently sensible mode of operations, but the policy of those states who choose to prohibit CBCT's is not open to judicial review or to modification by the Comptroller. The policy of competitive equality defers to state standards, not to standards prescribed by the Comptroller. Since 1927 Congress has made it clear that the Comptroller lacks the authority "to allow a national bank to establish as many agencies for receiving deposits and paying checks as he [the Comptroller] sees fit. . . ."[10]

The court below also correctly perceived the Congressional policy behind the McFadden Act amendments as specifically reserving to the states the control and regulation of branching by state and national banks, and recognized that for the Comptroller's arguments to prevail would require a change in—not adherence to—that policy.

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[10] 534 F.2d 935; Pet.App. 32a-33a (footnotes omitted).

> The Comptroller now invites this federal court to revise the balance of power hammered out by Congress almost fifty years ago. We decline the invitation. Section 36(f)'s definition of "branch" was designed to eliminate a competitive advantage favoring state banks, not to create a new competitive advantage for national banks. (534 F.2d 932; Pet.App. 24a).

The court below had little trouble disposing of the Comptroller's tortuous explanation of how CBCTs operate. The court found that, as to deposits, the Comptroller's arguments "are precisely the arguments rejected by the Supreme Court in *Plant City.*" (534 F.2d 939; Pet.App. 42a-43a). The court similarly found the same analogy with respect to the other two enumerated functions of Section 36(f)—"As we continue to point out, the same arguments were made and rejected in *Plant City.*"[11] To the Comptroller's contention that *Plant City* does not apply to the check cashing or lending functions of CBCTs, the court states:

> Although *Plant City* did not decide whether the facilities there were branches at which "checks [are] paid, or money lent," the Court, in holding that the facilities were "branches" at which deposits are received, relied on a broad interpretive standard applicable to *all* future determinations of "branchness."[12]

There is no reason to now alter that "broad interpretive standard."

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[11] 534 F.2d 945; Pet.App. 59a.

[12] 534 F.2d 943; Pet.App. 51a-52a. (Emphasis in original).

B. Legislative History

Petitioner states that:

> Nothing in the legislative history of the McFadden Act suggests that Congress intended therein to deprive national banks of their incidental power to perform routine banking functions off-premises. . . (Petition, p. 15).

Petitioner is plainly wrong. That is *exactly* what Congress intended. As the court below found, the legislative history shows that the McFadden Act was specifically designed to "clear up the uncertainties" surrounding the competitive situation then existing between national and state banks regarding branching.

The Comptroller had ruled that a national bank possessed the "incidental power" to establish so-called "tellers' windows" for the receipt of deposits and cashing of checks. This Court held that Section 5190, Revised Statutes (now 12 U.S.C. §81) confined national banks to the operation of one office and that national banks had no such implied power to branch. (*First National Bank* v. *Missouri ex rel. Barrett,* 263 U.S. 640 (1924)). In response thereto, Congress passed the McFadden Act to "equalize" the competitive situation by permitting national banks to "branch" within the city limits where the national bank was located if state banks were so authorized by state law to branch in the same manner. (This was expanded to state-wide, as well as city-wide, branching in 1933).[13] The legislative history, as outlined by the court below,[14] clearly shows that Section 36(f)

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[13] Act of June 16, 1933, § 23, 48 Stat. 189, 190. (Presently codified at 12 U.S.C. 36(c)).

[14] 534 F.2d 930-932; Pet. App. 18a-24a.

was drafted *specifically* to include within its definitional standard what the Comptroller termed "routine functions" theretofore being performed at "tellers' windows," and to cover *all* such off-premises operations. It must be remembered that when the bill was drafted, Congress was well aware of the Comptroller's abortive attempt to circumvent the prohibition against branching by calling the off-premises facilities "tellers' windows" (rather than "branches"), and by claiming such facilities were within the "incidental" powers granted to national banks to perform "routine" functions. Congress intended *specifically* to clear up any uncertainty surrounding these, or similar, facilities. Representative Stevenson of South Carolina explained the effect of the Act's definition of "branch":

> You take that right away from them; you take away from the comptroller the right to say that banks can maintain offices at which they can pay checks and receive deposits. You take the right absolutely away through that clause, and we have so written this bill that no power under the Federal Government shall have the right to go into a State and allow any national agency to establish or maintain any branch in violation of the law of the State. That is but a tardy recognition of the democracy which I represent namely that a State has the right to have its laws respected on great policy matters like this. 66 Cong. Rec. 1628 (1925).[15]

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[15] See also the statement of Representative Williams:

> Let me suggest to the gentleman that national banks now can meet this competition with State banks by opening tellers' windows; but if this bill goes through, tellers' windows will be wiped out, and national banks would not even have that privilege of meeting the competition of which the gentleman speaks 66 Cong. Rec. 1768 (1925).

Representative Wainwright asked Representative Celler if these facilities were branches.

> Mr. Wainwright: Are those teller windows in effect branches?
> Mr. Celler: Absolutely in effect they are branches where they receive deposits, pay out deposits and lend money, discount, and do an actual banking business. They make no bones of it. I may say to the gentlemen from New York that somebody, possibly the attorney general from New York, has the right to bring quo warranto proceedings against these banks for setting up these so-called "teller windows" to operate in violation of law. 67 Cong. Rec. 2860 (1926). See also, Senate debate 66 Cong. Rec. 4433 (1925), 67 Cong. Rec. 8296 (1926).

[16] He stated his reasons in the Record:

> Mr. McFadden: Mr. Speaker, in view of the country-wide interest in the national banking legislation which has been before the Congress for the past three years and closed with the signing by the President on February 25, 1927, of the Bill H.R. 2, I desire to print the new law and an analysis which I have prepared. This analysis gives in as plain language as possible my interpretation of the law as a practical banker of long experience and now a customer of banks. 68 Cong. Rec. 5812 (1927).

Representative McFadden, the sponsor of the bill in the House, prepared a section-by-section analysis and inserted it in the Congressional Record.[16] His analysis regarding the definition of "branch" is as follows:

> Sec. 7(f) defines the term "branch." *Any place outside of or away from the main office* where the bank carries on its business of receiving deposits, paying checks, lending money, or *transacting any business carried on at the main office,* is a branch if it is legally established under the provisions of this act. 68 Cong. Rec. 5816 (1927) (Emphasis added).

From the foregoing, it clearly appears that Congress was concerned not only with providing a definition of a typical branch bank, but was also concerned

with lesser bank agencies which performed only some of the functions of a typical branch bank, such as accepting deposits and cashing checks. Congress sought to make the section as broad as possible and, as Representative McFadden stated, felt that "transacting any business carried on at the main office" fell within the definition.

The Comptroller's ruling herein is once again an attempt to circumvent state branching laws. The method is the same: 1) calling the off-premises facilities "customer-bank communication terminals" (instead of "branches"), and 2) claiming such facilities are within the "incidental" powers granted to national banks to perform "routine" functions. However, regardless of the name used to describe the facility,

> [c]learly, Congress intended to include within its definition not only the typical brick-and-mortar branch bank, but also lesser bank agencies which provide only some of the services available at a traditional branch, i.e., agencies which accept deposits, cash checks, lend money, or transact any business generally carried on at the main office. (534 F.2d 932; Pet. App. 22a-23a).

The decision below is in accord with the result intended by Congress—to implement the policy of "competitive equality" for national and state banks.

C. "Competitive Equality"

The McFadden Act was passed to "equalize" the legal opportunity of national banks to branch, but carefully provided a method to maintain that equality —reserving to the states the control and regulation of branching—§ 36(c). Section 36(f), which provides the

definition of "branch," cannot be read without reference to § 36(c) which was intended to provide a check on a national bank's authority to branch and thereby maintain a state of "competitive equality."

Amicus curiae, American Bankers Association, ("ABA") contends that "the premise of the court below that 'competitive equality' is the 'cornerstone' of the dual banking system is not merely without support, it is demonstrably wrong." (*Amicus* brief, p. 10)." The plain language of the Act and its legislative history cannot, however, be so easily dismissed. The exhaustive review of the legislative history by the court below and that of this Court in *Walker Bank* and *Plant City* clearly illustrates the Congressional intention to seek and maintain competitive equality between national and state banks in the area of branch banking.

The ABA urges a separation of the language and reasoning of Section 36(c) from that of Section 36(f) of the Act, and argues that competitive equality should not be a factor in interpreting the federal definition of branch in § 36(f). This argument is flatly contradicted by the legislative history of the McFadden Act in which it is clear that *both* sections were

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[17] Rep. McFadden used the phrase "competitive equality" to describe the Act's purpose:

> As a result of the passage of this Act, the national bank act has been so amended that national banks are able to meet the needs of modern industry and commerce and *competitive equality* has been established . . . 68 Cong. Rec. 5815 (1927) (emphasis added).

In *Driscoll* v. *Northwestern National Bank of St. Paul,* 484 F.2d 173, 175 (C.A. 8, 1973), Mr. Justice Clark stated that "the *overriding* policy of the act is one of "competitive equality" between state and national banks." (Emphasis added).

designed to together achieve equality in the area of branch banking. Section 36(f) contains a broad definition of "branch" for national banks. Section 36(c) complements the definitional section and reinforces the Congressional intention to defer to the states on the issue of how, when and where branching shall be permitted. These sections, when read together, provide a continuing check which maintains equality in branching opportunity. A federal definition of "branch" for national banks, which would allow their establishment by national banks anywhere, in any numbers, within a state would only serve to tip the balance greatly in favor of the national banks, and that is *not* what the McFadden Act was designed to do. In short, the intent of the McFadden Act was to create and maintain an equality of legal opportunity in the area of branching by establishing a single standard in each state to which both state and national banks in that state must adhere.

The Court in *Plant City* was correct. It would make little sense to construe § 36(f)'s *definition* of "branch" in a vacuum without reference to the accompanying restrictions of § 36(c) on *location* of branches and without regard to clear Congressional intention to defer to the states on the issue of branching policy. As the court below found:

> Properly construed, the National Bank Act and the policy of competitive equality leave to the states the question of branching and its inherent advantages and disadvantages. (534 F.2d 936; Pet. App. 35a).

Branching requirements and the McFadden Act policy of limiting national banks, insofar as branching is concerned, to that which is allowed to state banks by state law, are national policies established by Congress and not open to revision by the Comptroller or the courts.[18] This policy is viewed by the ABA as anti-competitive. Others believe it essential to the maintenance of the dual banking system. The Congress has determined that such a policy is appropriate, and the statutory scheme effecting it binds the Comptroller now, just as it did when *Plant City* was decided.

The remainder of the ABA's *amicus* argument deals with *policy* issues more appropriately addressed to the Congress than to this Court. Indeed, Congress has already indicated its interest in EFTS and has established a "National Commission on Electronic Funds Transfer" to study the problems associated with this new technology and make recommendations for any necessary legislation. Should EFTS create competitive problems for *either* state or national banks, Congress is the appropriate body to resolve those issues.

The Comptroller, having lost one Supreme Court test (*Plant City*) of his attempt to nullify the branching provisions of the National Bank Act by his own administrative action, has by this current ruling, again attempted to administratively circumvent those same provisions. Instead of enforcing the law he is charged with administering, the Comptroller has, instead, refused to properly recognize the unanimous rulings of four courts of appeals, and continues to refuse to process branch applications for CBCTs because he *disagrees* with the policy of the law. Instead of addressing Congress, he now comes to this Court.

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[18] 534 F.2d 935; Pet. App., pp. 32a-33a, citing *Plant City, supra*, 396 U.S. at 138.

The National Bank Act is the governing policy mandated by the Congress. Unless and until that policy is revised by Congress, the Comptroller is bound to comply with its provisions—whether or not he agrees with them.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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